

LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE RUSH CIRCUIT AND SUPERIOR COURT

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TRIAL RULES

Rule LR70 – TR53.5-1

In all cases in which a Motion for Continuance is filed, the Motion must contain the following:

- A. A statement indicating that all opposing counsel (or parties if pro se) including any Guardian Ad Litem have been contacted and agree or object to the continuance.

All Motions for Continuance must be accompanied by a proposed Order with blanks for resetting the hearing.

LR70 – TR79-2 Special Judge Selection

In the event a special judge selected pursuant to Trial Rule 79(D), (E) or (F) does not accept the case, a special judge shall be designated by the Clerk of the Rush Superior and Rush Circuit Courts in sequence from the following list of judges, to-wit:

1. Judge, Union Circuit Court
2. Judge, Fayette Superior Court
3. Judge, Fayette Circuit Court
4. Judge, Wayne Superior Court No. 2
5. Judge, Wayne Superior Court No. 1
6. Judge, Wayne Circuit Court
7. Judge, Franklin Circuit Court
8. Judge, Rush Circuit Court
9. Judge, Wayne Superior Court No. 3
10. Judge, Rush Superior Court

The Clerk shall maintain such records as necessary to assure that selections are rotated in the above sequence.

LR70 – TR79-3 Special Judge Selection in Civil Cases Pursuant to TR 79C

In the event that the Judge of the Rush Circuit or Superior Court recuses himself in a case, a special judge shall be selected by agreement of the parties in accordance with TR 79 (D) and (E). Failing to select a special judge pursuant to TR 79(D) and (E), a special judge shall be selected randomly from a list of eligible judges from within the administrative district that shall be maintained by the clerk of the courts.

ADMINISTRATIVE RULES

LR70 – AR00-1

Case Assignment

Until further order of the Courts the following case assignments will be in effect for case distribution between the Rush Circuit Court and Rush Superior Court:

- A. Infractions opened during odd numbered months shall be assigned to Superior Court while infractions opened during even numbered months shall be assigned to Circuit Court.
- B. Unless otherwise designated, all other cases will be assigned on an equal random basis.

LR70 – A12-2

Facsimile Transmission

The Judges of the Rush Superior and Circuit Courts authorize electronic facsimile filing and designate (765) 932-2856 for Superior Court and (765) 932-2357 for Circuit Court as the telephone numbers to receive such transmissions for filing in any case, provided:

- A. Such matter does not exceed ten (10) pages including the cover sheet;
- B. Such matter does not require the payment of fees;
- C. The sending party creates, at the time of transmission, a machine generated log for such transmission; and
- D. The original document is sent or delivered to the Rush County Clerk as soon as practicable and the transmission log is maintained by the sending party for the duration of the litigation.
- E. During normal, posted business hours, the time of filing shall be the time of the facsimile is received in the office of the Circuit or Superior Courts. The original document shall be substituted for the facsimile upon receipt by the Clerk's office.
- F. If an original document is not received within ten (10) days, the facsimile shall be destroyed and the filing shall be null.

In all other respects, facsimile transmissions shall comply with Administrative Rule 12.

The undersigned Courts comprise all the Courts of record of Rush County, Indiana and hereby adopt the following Local Rule by which Court Reporter services shall be governed.

PREPARATION OF TRANSCRIPTS FOR INDIGENT PERSONS

1. All transcripts for indigent persons are prepared during the regular business hours of the Court.
2. In the event an indigent transcript cannot be prepared during regular working hours, the Reporter must receive permission from the Judge to prepare portions of the transcript outside the regular business hours of the Court.
3. Upon approval by the Judge for preparation of indigent transcripts outside of the regular business hours, the Reporter shall charge no more than \$3.50 per page for transcripts outside of the regular business hours. The Reporter shall charge no more than \$1.25 per page for each copy of the transcript. A minimum fee of \$35.00 per transcript may be charged for small transcripts and is not to be used in addition to a per page fee. The Index and Table of Contents shall be charged at the per page rate. The Reporter may charge up to \$14.00 per hour for time spent binding the transcript and exhibit binders. The Reporter may charge reasonable costs for office supplies for binding and electronic transmission not to exceed \$1.00 per diskette and \$.75 per binder. The Reporter shall submit a claim to the county for the preparation of indigent transcripts. The claim must be approved by the supervising Judge.
4. The fees for any state indigent transcripts shall be the same amount as the fee for county transcripts.
5. The Court Reporter shall report, at least on an annual basis, all transcript fees received for the preparation of county indigent, state indigent or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court Administration.
6. In preparing non-indigent transcripts, the Court Reporter may contract directly with a party or attorney to provide the services. The Court Reporter shall charge with a party or attorney to provide the services. The Court Reporter shall charge no more than \$3.50 per page for an original transcript and \$1.25 for a copy of a transcript. In the event the Court Reporter uses any Court equipment for the preparation of a private transcript she shall reimburse Rush County at a rate of \$.01 per page. This reimbursement shall be made once per quarter no later than January 15, April 15, July 15 and October 15.

CRIMINAL LAW RULES

LR70 – CR00-1

Case Assignment

Until further order of the Courts the case assignments will be in effect for case distribution between the Rush Circuit Court and Rush Superior Court for criminal cases as follows:

- A. All criminal cases with material elements (or separate counts) involving drugs or alcohol shall be assigned to Superior Court.
- B. All other criminal case shall be assigned to Circuit Court.

Rule LR70 – CR13-2

Transfer

A Judge of Rush Circuit or Rush Superior Court by appropriate order entered in the Record of Judgment Orders may transfer and reassign to the other court of record within the county with jurisdiction to hear the charged offense in any pending case, subject to acceptance by the receiving court.

LR70 – CR13-3

Refiling and Subsequent Filings

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the court from which the dismissal was taken.

LR70 – CR13-4

Reassignment

In the event a change of judge is granted or a judge is disqualified or recuses in either Rush Circuit or Rush Superior Court, the case shall be reassigned first to the other sitting judge within the county and then to a special judge who shall be selected randomly from a list of eligible judges from the contiguous counties that shall be maintained by the clerk of the courts. Multiple cases may be assigned to one judge if the cases are related.

LR70 – CR13-5

Appointment of Special Judge

In the event no Judge is available for assignment or reassignment of a Felony or Misdemeanor case, such case shall be certified to the Indiana Supreme Court for the appointment of a Special Judge. In the event the Judge presiding in a Felony or Misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

FAMILY LAW RULES

LR70 – FL00-1 Case Assignment

Until further order of the Courts all cases shall be assigned on an equal random basis.

LR70 – FL00-2 Order to Appear

In all dissolution case in which a petition for contempt or other request for an Order to Appear is requested, the Clerk of the Rush Circuit Court shall sign said Order to Appear.

LR70 – FL00-3 Parenting Sessions

Before final hearing is scheduled on a Petition for a Dissolution of Marriage or Petition for a Legal Separation in which the parties have minor children of the marriage, each party must attend not less than one session on parenting.

- A. The moderator of each session will provide each attendee with a certificate of attendance which must be filed with the Clerk prior to the Court's granting a Petition for Dissolution of Marriage or a Petition for Legal Separation.
- B. Each party is responsible for cost of the party's participation. Allowances for waiver of fee will be given upon a good faith showing of indigence.

LR70 – FL00-4 Modification of Child Support

It shall be presumed that the effective date for a modification of child support shall be sixty (60) days from the filing of a Petition to Modify Support.

JUVENILE LAW RULES

LR70 – JV00-1

Case Assignment

Until further order of the Courts the case assignments will be in effect for case distribution between the Rush Circuit Court and Rush Superior Court for criminal cases as follows:

- A. Chins cases shall be assigned to Circuit Court.
- B. All other cases will be assigned on an equal random basis. However, if a juvenile has an open delinquency case, all subsequent delinquency cases shall be filed in the same court as the open case.

SMALL CLAIM LAW RULES

LR70 – SC00-1

Case Assignment

Small claims for Atlas Collections and the schools shall be assigned to Circuit Court.

All other small claims shall be assigned to Superior Court.

PROBATE LAW RULES

LR70 – PR00-1

Bond

In every supervised estate and guardianship, the personal representative or guardian, before entering duties, shall file a bond not less than the value of the annual rents and profits of all property of the estate, except as hereinafter provided:

1. Where, under the terms of the will, the testator expresses an intention that the bond be dispensed with, the Court ~~shall~~ may set a bond adequate to protect creditors and tax authorities.
2. Where the heirs or legatees have filed a written request that the personal representative serve without bond, the bond ~~will~~ may be set in an amount adequate to protect the rights of creditors and tax authorities only.
3. In lieu of a bond in any supervised estate, a personal representative may serve with approval and consent of 2/3 of the heirs.
4. In lieu of a bond, a fiduciary may restrict transfer of all or part of the guardianship liquid assets placing those assets in a federally-insured financial institution with the following restriction placed on the fact of the account or document: NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE RUSH CIRCUIT COURT OR SUPERIOR COURT OF RUSHVILLE, INDIANA.

The fiduciary shall file the following with the Court:

- A. Prior to issuance of Letters, the fiduciary's attorney shall execute an Attorney's Undertaking for such assets.
- B. Within ten (10) days of the order authorizing the creation of the account, a certification by an officer of the financial institution at which the account has been created, stating that the account is restricted as required by the Court, shall be filed with the Court.

LR70 – PR00-2

Inventory

In all supervised estates, the personal representative shall file an inventory with the Court within two (2) months of the appointment of the personal representative. In all unsupervised estates, the personal representative shall file within two (2) months of the appointment of the personal representative certification that the inventory has been completed as required by I.C. 29-1-7.5-3.2.

A temporary guardian shall file an inventory with the Court within thirty (30) days of appointment. All other guardians shall file a complete inventory of property with the Court within ninety (90) days of appointment.

LR70 – PR00-3

Fees for Personal Representatives and Attorneys

- 1. No fees for personal representatives, guardians or attorneys shall be paid out of any supervised estate or guardianship without prior written order of the court.
- 2. Final fees in supervised estates and guardianships shall not be paid until the court has approved the final account. All orders for final fees shall provide that said fees are to be paid only after approval of the final account. This rule does not preclude payment of partial fees during administration after obtaining written Court order for the same.
- 3. No petition for fees of personal representatives or attorneys need be filed in unsupervised estates.
- 4. Petitions for fees must be signed by the personal representative or guardian.
- 5. Unjustified delays in carrying out duties by the fiduciary and/or attorney will result in a reduction of fees of the individuals responsible for the delay.

LR70 – PR00-4**Accountings**

Whenever a supervised estate cannot be closed within one (1) year, an intermediate account shall be filed with the Court within thirty (30) days after the expiration of the one (1) year and each succeeding year thereafter. Such accounting shall comply with the provisions of I.C. 29-1-6-4 and 29-1-16-6 and:

1. shall state facts showing why the estate cannot be closed;
2. shall proposed partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

All Social Security or Medicare benefits received by the fiduciary on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility. A copy of the annual accounting required by the Social Security Administration for a representative payee shall be an adequate accounting if those are the only monies received by the guardian.

All accountings shall follow the prescribed statutory format. Informal, handwritten or transactional accountings will not be accepted.

LR70 – PR00-5**Supplemental Reports**

All supplemental reports filed with the Court must be accompanied by receipts for distribution made.

LR70 – PR00-6**Adoption**

A consent to adoption must be notarized.

LR70 – PR00-7**Requirements for Establishing Guardianships**

In all guardianships matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing unless the provisions of I.C. 29-3-5-1(d) are met.

A physician's report by the doctor treating the alleged adult incapacitated person or such additional evidence as the Court shall require, shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

LR70 – PR00-8**Restricted Accounts in Guardianships or Minors**

In guardianships over the estate of a minor, unless otherwise authorized by the Court, funds shall be placed in a restricted account, designating that no principal or interest may be withdrawn without prior written order of the Rush Circuit Court.

Prior to the issuance of letters in a guardianship over a minor's estate or the compromise of a minor's claim, the guardian and attorney shall execute the Lawyer's Undertaking and Obligation and Order to Guardians.

A certification by a financial institution that a properly restricted account has been created shall be filed within ten (10) days of the Order establishing guardianship.

No surety bond or restricted account is required where a corporate fiduciary serves as a guardian or co-guardian of the estate.

LR70 – PR00-9

Address of Fiduciaries

All petitions for appointment of personal representatives or guardians shall contain the petitioner's current address. A personal representative or guardian who changes address shall immediately advise the Court of the new address.

Rule LR70 - PR00-10

Fees of Attorney and Fiduciary

1. No Fees for fiduciaries or attorneys shall be paid in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

2. No attorney or fiduciaries shall be paid in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

3. Rule 1.5 of the Rule of Professional Conduct has been adopted by the Supreme Court of Indiana to govern attorney fees. All fees charged by attorneys shall be reasonable. The rule further enumerates the factors to be considered, which are as follows:

- a. The time and labor required, the novelty and difficulty of questions involved, and the skills requisite to perform the legal service properly;
- b. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyers;
- c. The fee customarily charged in the locality for similar legal services;
- d. The amount involved and the results obtained;
- e. The time limitations imposed by the client or by the circumstances;
- f. The nature and length of the professional relationship with the client;
- g. The experience, reputation and ability of the lawyer or lawyers performing the services.

CERTIFICATION BY FINANCIAL INSTITUTION

TO: _____

FROM: _____
(Guardian's name)

RE: Guardianship of _____

In order to comply with the rules of the Probate Court, I am required to
file a Certification of Account Balances. Please certify the balances and
names on the accounts I have listed below.

Dated: _____

(Guardian)

For Bank Use Only:

I certify that on the ____ day of _____, 20____, the last day of the period
covered by this accounting, there was on deposit in this institution to the credit of the
Guardian, the following balance:

Name on Account	Account Number	Balance	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name and Address of Institution:

Signature of Certifying Officer: _____
Printed: _____
Title: _____
Date: _____

STATE OF INDIANA

IN THE RUSH CIRCUIT/SUPERIOR COURT

COUNTY OF RUSH

CAUSE NO:

IN RE THE MATTER OF THE
GUARDIANSHIP OF

PHYSICIAN'S REPORT

_____, a physician licensed to practice medicine in all its branches in the State of Indiana, submits the following report on _____ alleged incapacitated person, based on an examination of said person on the ____ day of _____, 20____.

1. Describe the nature and type of the incapacitated person's disability:

2. Describe the incapacitated person's mental and physical condition; and, when it is appropriate, describe educational condition, adaptive behavior and social skills:

1. State whether, in your opinion, the incapacitated person is totally or only partially incapable of making personal and financial decisions; and, if the latter, the kinds of decisions which the incapacitated person can and cannot make. Include the reason for this opinion. _____

4. What, in your opinion, is the most appropriate living arrangement for the incapacitated person; and, if applicable, describe the most appropriate treatment or rehabilitation plan. Include the reasons for your opinion. _____

5. Can the incapacitated person appear in court without injury to his/her health? _____

If the answer is no, explain the medical reasons for your answer.

I affirm under the penalties of perjury, the foregoing representations are true.

Signature: _____
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____

This report must be signed by a physician. If the description of the incapacitated person's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by several professionals, all professionals preparing evaluations must sign the report. Evaluations on which the report is based must have been performed within three (3) months of the date of the filing of the petition.

Names and signatures of other persons who performed evaluations upon which this report is based:

Name: _____
Address: _____
Signature: _____

Name: _____
Address: _____
Signature: _____

STATE OF INDIANA

IN THE RUSH CIRCUIT/SUPERIOR COURT

IN THE COUNTY OF RUSH

CAUSE NUMBER:

IN RE THE MATTER OF THE
GUARDIANSHIP OF:

Name of Protected Person

LAWYER'S UNDERTAKING AND OBLIGATION

I, (Name of Guardian), having been appointed as Guardian/Protecting Person of the Estate of (Name of Protected Person), by the Rush Circuit/Superior Court, Rushville, Indiana, hereby authorize my Attorney, (Name of Attorney), to deposit all of the net Guardianship assets, in the amount of \$_____, in a bank account:

- (a) in my name as Guardian
- (b) in the name of the protected person, (Name of Protected Person)

with the restriction that withdrawal of principal or interest may be made ONLY on written order of this Court, or upon the Protected Person reaching the age of majority.

Date: _____

Name of Guardian
Guardian/Protecting Person
of (Name of Protected Person)

I, as an Officer of this Court and as Attorney for the above Guardian/Protecting Person, hereby assume and undertake personal responsibility to the above named Protected Person and to the Court to make the above designated restricted deposit and to deliver copies of the SIGNATURE CARD of CERTIFICATE evidencing the restricted deposit and the amount thereof to the Court within ten (10) days from this date, or to refund all of the funds to the Court immediately upon demand.

Date: _____

Attorney

STATE OF INDIANA

IN THE RUSH CIRCUIT/SUPERIOR COURT

COUNTY OF RUSH

CAUSE NUMBER:

IN THE MATTER OF THE
GUARDIANSHIP OF:

**CERTIFICATION OF RESTRICTION OF ACCOUNT
IN COMPLIANCE WITH LAWYER'S UNDERTAKING**

The undersigned hereby certifies that he/she is an Officer or employee of the below named financial institution and that the following account has been opened:

Type of Account: _____
Account Number: _____
Amount Deposited: _____
Owner per Signature _____
Card or Document of Title: _____

The undersigned further certifies that a copy of the Order of the Rush Circuit/Superior Court has been examined in full and is on file with us and that the terms of this account includes a restriction that withdrawal of principal or interest may be made only on written order of the Rush Circuit/Superior Court, Rushville, Indiana, or upon the Protected Person reaching the age of majority.

Dated: _____

Name of Financial Institution

Signature

Printed

Title